

**TESTIMONY OF FCC COMMISSIONER AJIT PAI
BEFORE THE SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL
GOVERNMENT OF THE UNITED STATES SENATE
COMMITTEE ON APPROPRIATIONS**

“BUDGET HEARING—FEDERAL COMMUNICATIONS COMMISSION”

APRIL 5, 2016

Chairman Boozman, Ranking Member Coons, and Members of the Subcommittee, it is a privilege to appear before you today. Thank you for inviting me to testify on the Federal Communications Commission’s budget request for Fiscal Year 2017.

Last year, I offered three specific suggestions to this Subcommittee regarding the Commission’s budget request for Fiscal Year 2016. I am pleased that Congress and the Subcommittee took these recommendations into account.

First, Congress and the Subcommittee provided specific budget authority for moving the FCC’s headquarters or reorganizing how we use our existing facilities (known internally as “restacking”). Moving or reorganizing is likely to produce meaningful cost savings over the long term, but this will require a substantial, one-time expense. I therefore thought that it made sense for Congress to provide us with specific budget authority for that purpose. If these funds had been included within our general appropriation amount, as the Commission had requested, it would have given many a misleading picture of the Commission’s base budget and made it harder to reduce that budget when there was no longer the need to spend money on moving expenses.

I therefore applaud the Commission for requesting specific budget authority for FY 2017 instead of general budget authority for the second (and hopefully final) tranche of moving or restacking funds. In my view, this is a fiscally responsible proposal, and I urge this Subcommittee to approve it.

Second, Congress and the Subcommittee rejected the Commission’s request to transfer \$25 million from the Universal Service Fund (USF) to the Commission. I opposed the transfer request, among other reasons, because it would have imposed a stealth tax increase on the American people.

I am disappointed that the Commission is yet again seeking to siphon money from the USF to fund the FCC’s work, and I urge this Subcommittee to again reject this proposal. To be sure, the Commission this year is requesting a smaller transfer of \$9.5 million. But the reasons for opposing *any* diversion of USF funds to the Commission are just as compelling now as they were one year ago. I agree with Chairman Greg Walden of the Subcommittee on Communications and Technology of the House Energy and Commerce Committee that transferring USF funds to the FCC is a “disturbing proposal.” And Chairman John Thune of the Senate Commerce Committee has said that it would set “a dangerous precedent.” The Commission’s authorizers are right: USF funds should be spent across our country closing the digital divide, not at the FCC’s headquarters here in Washington, DC.

Third, the Subcommittee forbade the Commission from using any appropriated funds to regulate broadband rates. I was disappointed that this provision did not make its way into the appropriations bill that was ultimately passed by Congress.

The Subcommittee should take another bite at this apple. There is no legitimate reason to oppose blocking the FCC from engaging in broadband rate regulation. Supporters of the FCC’s Internet regulations have repeatedly disclaimed any interest in regulating broadband rates. President Obama himself told the FCC to “forbear[] from rate regulation.” And Chairman Wheeler told this Subcommittee last year: “If Congress was to come along and say that’s off the table for the next Commission, too, I have no difficulty with it.”

It is therefore perplexing that the FCC and the Administration lobbied so hard last year to kill this Subcommittee's attempt to take broadband rate regulation off the table. Indeed, my understanding from multiple sources is that the FCC and the Administration turned down a deal that would have provided millions of dollars in additional funding to the Commission in exchange for a provision prohibiting broadband rate regulation.

All of this raises serious concerns about the Commission's real intentions. Because when it comes to the topic of Internet regulation, we know from past experience that what was once unthinkable can become quite real the moment political pressure is applied. A less-intrusive regulatory approach can give way to heavy-handed, utility-style regulation. A wireless service plan like T-Mobile's Binge On can be "highly innovative and highly competitive" one month and be the subject of an FCC investigation the next. Simply put, Congress should not trust the Commission's claim that it won't regulate broadband rates. Indeed, just two weeks ago, in a startling reversal, Chairman Wheeler told the Subcommittee on Commerce and Technology of the House Energy and Commerce Committee that he now believes that the FCC *should and does* have the authority to regulate broadband rates. The only way to ensure that rate regulation does not happen is for Congress to take a Reagan-inspired approach: "trust, but codify."

* * *

As you begin drafting our appropriations bill for Fiscal Year 2017, I want to draw the Subcommittee's attention to three additional concerns: the grandfathering of joint sales agreements (JSAs) among television stations, the proposed increase in auction spending, and the FCC's oversized media shop.

One, I urge this Subcommittee to once again act to safeguard joint sales agreements among television stations. In last year's appropriations bill, an overwhelming bipartisan majority in Congress passed a law ordering the FCC to grandfather existing JSAs for ten years. How did the FCC respond? It has ignored the law and is using the FCC's merger review authority to force companies to unwind JSAs. One recent example involves my home state of Kansas where the Commission recently required parties to terminate a JSA that allowed Entravision, a Univision affiliate, to provide the only Spanish language news in the Sunflower State. This action was particularly egregious because the FCC's leadership had previously testified to your counterparts in the House that this specific JSA would not be affected by the Commission's new policy.

A bipartisan group of twelve Senators, including Chairman Boozman and Senator Durbin, have made their displeasure clear. They stated that the FCC "ignored bipartisan concerns raised by Congress" on JSAs and were "extremely disturbed" by the Commission's actions. In particular, they explained that the Commission was "undermin[ing] Congress' clear intent to preserve JSAs that were lawfully executed prior to the FCC's 2014 rule changes." It is telling that despite agreement on little else, a powerful, bipartisan group of lawmakers has found common cause in taking on the agency's lawlessness in this matter.

In its letter, Senators asked the FCC to eliminate any conditions imposed on previously approved license transfers that require the termination of any JSAs in existence prior to March 31, 2014 and respect the statutory grandfather of JSAs when evaluating any assignments or license transfers in the future. Unfortunately, Chairman Wheeler's response to this letter as well as his testimony two weeks ago before the House makes clear that the Commission has no intention of complying with the law or these requests. I therefore would urge this Subcommittee to include very specific language in the upcoming appropriations bill requiring the Commission to take such action.

Two, I am skeptical of the Commission's proposal to raise spending on the spectrum auctions program to \$124 million. The \$117 million being spent this year is a record, and it's easy to understand why the auctions program is funded at that level. After all, this fiscal year we are holding the world's first

incentive auction for spectrum, an enormously complicated endeavor requiring plenty of resources. And included in that budget was \$7.2 million targeted for the Commission's move.

Fiscal Year 2017 should be quite different. The incentive auction will likely be over, and there is no comparable spectrum auction on the horizon for that fiscal year. Even the FY 2017 request for the Commission's move is less—\$4.4 million lower, to be precise. And yet, rather than a substantial decrease, the request for auction spending in FY 2017 is \$7 million *higher*. It's difficult to understand why.

Let's look, for example, at one of the specific spending increases proposed for the auctions program. The Commission is requesting \$3.58 million and three additional FTEs to implement the Spectrum Pipeline Act of 2015. Why can't this work be handled by current FCC employees and the existing budget? Many FCC staffers have been working on issues related to the forward side of the incentive auction. During the next fiscal year, when the forward auction work will be completed, I'm confident that we could easily reassign three of them to help implement the Spectrum Pipeline Act of 2015.

I would also urge this Subcommittee to examine closely whether reductions can be made from last year's spending. Are there expenses that have been or will be incurred during this fiscal year because of the incentive auction that will not be repeated during Fiscal Year 2017? Can we devote fewer staff resources to the auction program if no major auction will be held? And if the answer to one or both of these questions is yes, shouldn't the amount of funds provided by Congress for the spectrum auctions program be adjusted accordingly?

Three, I also recommend that this Subcommittee examine carefully the budget request for the FCC's Office of Media Relations. For Fiscal Year 2017, the FCC requests 15 FTEs for the Office of Media Relations. By comparison, in its budget request for the next fiscal year, the Federal Trade Commission only requests 10 FTEs for its Office of Public Affairs, which handles that agency's relations with the media. Why should the FCC's media relations office be 50% larger than the FTC's? The FTC's mission is just as critical and arguably broader, considering it applies consumer protection and competition rules to virtually all non-common carriers. Given that this Subcommittee has jurisdiction over both the FCC and FTC, it is well-positioned to look into this matter.

From my perspective, I have witnessed a disturbing mission creep within the FCC over the last couple of years when it comes to media relations. Specifically, Commission staffers are being directed to conduct what are most appropriately described as propaganda efforts. Non-public information is often shared with the press while my office is left in the dark. Resources are poured into controlling press cycles, creating pithy Twitter hashtags, and garnering positive headlines for the Chairman's Office rather than working inside the building to reach consensus. In some cases, the agency's media blitz has been designed to exert pressure on other Commissioners, both Democrats and Republicans, to vote for the Chairman's proposals. This is inappropriate. Career staffers should not be conducting media campaigns designed to influence the votes of FCC Commissioners. Indeed, until Commissioners vote on a proposal by the Chairman, the Commission as a whole has no position on that proposal. Yet the Chairman's Office's hope—usually requited—is for the press to run headlines “The FCC is about to [insert policy prescription *du jour*].”

What makes the matter worse is that these media campaigns are often conducted on background so Commissioners and the public have no idea who is waging them. Indeed, the trade publication *Communications Daily* reported last December that “the FCC stands out for its extensive use of events where officials speak on behalf of the agency to groups of reporters but the officials can't be identified by name or quoted verbatim.” The publication further reported that “[m]any PR experts said they couldn't recall any agency other than the FCC that holds news events that aren't on the record so routinely on matters unrelated to national security.”

One example of what has gone wrong occurred last month when the Chairman circulated his proposal to expand the Lifeline program. My office did not learn about this proposal from the Chairman's Office. We didn't learn about it from the relevant FCC Bureau or anyone else at the Commission. Instead, we first found out about it from an article in *The New York Times*. That's right. The Chairman's proposal was shared with *The New York Times* before it was shared with FCC Commissioners—or at least with the minority Commissioners. Moreover, following publication of *The New York Times* article, FCC officials held a call with a large group of reporters to promote the Lifeline proposal *before* giving Commissioners a copy of the plan. Conduct like this does not reflect respect for the role played by other Commissioners at the FCC and should stop immediately.

If the FCC's Office of Media Relations has the time and resources to engage in activities that are more appropriate for a partisan political campaign than the rulemaking process conducted by a multi-member administrative agency, then I suspect that it is too large and its budget should be cut substantially.

* * *

Chairman Boozman, Ranking Member Coons, and Members of the Subcommittee, thank you once again for holding this hearing and allowing me the opportunity to speak. I look forward to answering your questions, listening to your views, and working with you and your staffs in the days ahead.